

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3, 29C.9(5) and 29C.9(8), the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 7, “Local Emergency Management,” Iowa Administrative Code.

These amendments are intended to implement changes that have been made in Iowa Code chapter 29C that transformed the Homeland Security and Emergency Management Division of the Department of Public Defense to a stand-alone department.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before November 17, 2015. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail to john.benson@iowa.gov.

Also, there will be a public hearing on November 17, 2015, at 11 a.m. in the Department of Homeland Security and Emergency Management Cyclones Conference Room at 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairment, should contact the Homeland Security and Emergency Management Department and advise of specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 29C.

The following amendments are proposed.

ITEM 1. Amend subrule 7.3(1) as follows:

7.3(1) The county board of supervisors, city councils, and sheriff in each county shall cooperate with the homeland security and emergency management ~~division~~ department to establish a local emergency management commission to carry out the provisions of ~~2011 Iowa Code Supplement~~ chapter 29C.

a. to c. No change.

d. A commission member may designate an alternate to represent the designated entity. For any activity relating to ~~2011 Iowa Code Supplement~~ section 29C.17, subsection 2, or Iowa Code chapter 24, participation shall only be by a commission member or a designated alternate that is an elected official for the same designated entity.

ITEM 2. Amend subrule 7.3(2) as follows:

7.3(2) Local commission bylaws. The commission shall develop bylaws to specify, at a minimum, the following information:

a. to l. No change.

The bylaws, as adopted, shall be signed by each member of the commission. The commission shall record the signed bylaws with the county recorder and shall forward a copy of the bylaws to the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department.

ITEM 3. Amend subparagraphs **7.3(4)“d”(3)** and **(4)** as follows:

(3) Plans shall be regularly reviewed and amended as appropriate in accordance with a five-year schedule established by the commission, which shall include at a minimum:

1. A complete review, and amendment as appropriate, at a minimum of every five years. However, a review, and amendment as appropriate, of the hazardous materials portion and of a minimum of 20 percent of the remaining annexes or portions of the plan shall be conducted on a yearly basis. The complete operations plan must be reviewed entirely, and amended as appropriate, every five years. A copy of the portions of the plan that are reviewed, regardless of amendment, must be certified and submitted to the ~~division~~ department for approval by August 1 of each year.

2. Recovery and mitigation plans must also be reviewed, and amended as appropriate, certified and submitted to the ~~division~~ department for approval within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster.

(4) To be certified, the plan must be adopted by the members of the commission and attested to by the chairperson and the local emergency management coordinator on a signature document as specified by the ~~division~~ department.

ITEM 4. Amend subparagraphs **7.3(4)“d”(9)** to **(11)** as follows:

(9) Within 60 calendar days from the receipt of the plan, the ~~division~~ department shall review plans or portions of plans submitted by a commission for approval. The ~~division~~ department shall notify the local emergency management agency in writing of the approval or nonapproval of the plan. If the plan is not approved, the ~~division~~ department shall state the specific standard or standards that are not being met and offer guidance on how the plan may be brought into compliance.

(10) A comprehensive emergency plan shall not be considered approved by the homeland security and emergency management ~~division~~ department as required in ~~2011 Iowa Code Supplement~~ subsection 29C.9(8) unless such plan adheres to and meets the minimum standards as established in paragraph 7.3(4)“d.”

(11) ~~2011 Iowa Code Supplement~~ section 29C.6 provides that state participation in funding financial assistance in a presidentially declared disaster is contingent upon the commission’s having on file a state-approved, comprehensive emergency plan as provided in ~~2011 Iowa Code Supplement~~ subsection 29C.9(8). Plans must be received by the ~~division~~ department within 180 days of the formal closing of the disaster incident period for a presidential declaration for major disaster for the affected jurisdiction and must be approved by the ~~division~~ department within 240 days of the formal closing of the disaster incident period for public or private nonprofit entities within the county to be eligible to receive state financial assistance.

ITEM 5. Amend subparagraph **7.3(4)“f”(2)** as follows:

(2) Individuals identified by the commission to perform the function of damage assessment shall be trained through a course of instruction approved by the ~~division~~ department.

ITEM 6. Amend subrule 7.3(5) as follows:

7.3(5) Two or more commissions. Two or more commissions may, upon review by the ~~state administrator~~ director and with the approval of their respective boards of supervisors, cities, and sheriffs, enter into agreements pursuant to Iowa Code chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

ITEM 7. Amend subrule 7.4(1) as follows:

7.4(1) Each commission shall appoint a local emergency management coordinator who shall serve at the pleasure of the commission. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission’s and coordinator’s duties as provided in ~~2011 Iowa Code Supplement~~ sections 29C.9 and 29C.10, as further described in subrule 7.3(4), and as otherwise assigned and authorized by the commission.

ITEM 8. Amend subrule 7.4(4), introductory paragraph, as follows:

7.4(4) Local emergency management coordinator continuing education requirements. Each local emergency management coordinator shall meet the following educational development requirements.

The ~~administrator~~ director may extend the time frame for meeting these continuing education requirements upon request from the commission.

ITEM 9. Amend paragraph 7.4(4)“e” as follows:

e. The Iowa homeland security and emergency management ~~division~~ department, in conjunction with the Iowa Emergency Management Association, may substitute courses when deemed appropriate.

ITEM 10. Amend rule 605—7.6(29C), introductory paragraph, as follows:

605—7.6(29C) Damage assessment and financial assistance for disaster recovery. Disaster-related expenditures and damages incurred by local governments, private nonprofit entities, individuals, and businesses may be reimbursable and covered under certain state and federal disaster assistance programs. Preliminary damage assessments shall be provided to the homeland security and emergency management ~~division~~ department prior to the governor’s making a determination that the magnitude and impact are sufficient to warrant a request for a presidential disaster declaration.

ITEM 11. Amend subrule 7.6(2) as follows:

7.6(2) Damage assessment guidance and forms to be provided. The homeland security and emergency management ~~division~~ department will provide guidance regarding the methodologies to be used in collecting damage assessment and impact statement information and shall provide the forms and format by which this information shall be recorded.

ITEM 12. Amend subrules 7.7(2) and 7.7(3) as follows:

7.7(2) Application for funding. Commissions may apply for funding under the emergency management performance grant program by entering into an agreement with the ~~division~~ department and by completing the necessary application and forms, as published and distributed yearly to each commission by the ~~division~~ department.

7.7(3) Allocation and distribution of funds.

a. The ~~homeland security and emergency management division~~ department shall allocate funds to eligible commissions within 45 days of receipt of notice from the federal Department of Homeland Security, Preparedness Directorate, Office of Grants and Training, that such funds are available. The ~~division homeland security and emergency management department~~ shall use a formula for the allocation of funds based upon the number of eligible applicants, the part-time or full-time status of the coordinator, 50 percent equal-share base, and 50 percent population base. The total allocation of funds for an applicant may not exceed the lesser of \$39,000 or the amount requested by the applicant.

b. and c. No change.

ITEM 13. Amend subrule 7.7(4) as follows:

7.7(4) Compliance. The ~~administrator~~ director may withhold or recover emergency management performance grant funds from any commission for its failure or its coordinator’s failure to meet any of the following conditions:

a. to f. No change.

g. Enter into and file a cooperative agreement with the ~~division~~ department by the stipulated filing date.

h. to l. No change.

ITEM 14. Amend subrules 7.7(5) to 7.7(7) as follows:

7.7(5) Serious nonperformance problems. If a commission cannot demonstrate achievement of agreed-upon work products, the ~~division~~ department is empowered to withhold reimbursement or to recover funds from the commission. Corrective action procedures are designed to focus the commission’s attention on nonperformance problems and to bring about compliance with the cooperative agreement. Corrective action procedures, which could lead to sanction, may be enacted as soon as the ~~administrator~~ director becomes aware of serious nonperformance or noncompliance. This realization may arise from staff visits or other contacts with the local emergency management agency or commission, from indications in the commission’s or coordinator’s quarterly report that indicate a significant shortfall from planned accomplishments, or from the commission’s or coordinator’s failure

to report. Financial sanctions are to be applied only after corrective action remedies fail to result in accomplishment of agreed-upon work product.

7.7(6) Corrective actions.

a. Informal corrective action. As a first and basic step to correcting nonperformance, a designated member of the homeland security and emergency management ~~division~~ department staff will visit, call or write the local emergency management coordinator to determine the reason for nonperformance and seek an agreeable resolution.

b. Formal corrective action. On those occasions when there is considerable discrepancy between agreed-upon and actual performance and response to informal corrective action is not sufficient or agreeable, the ~~division~~ department will take the following steps:

(1) Homeland security and emergency management ~~division~~ department staff will review the scope of work, as agreed to in the cooperative agreement, to determine the extent of nonperformance. To focus attention on the total nonperformance issue, all instances of nonperformance will be addressed together in a single correspondence to the commission.

(2) The ~~administrator~~ director will prepare a letter to the commission which will contain, at a minimum, the following information:

1. The reasons why the ~~division~~ department believes the commission may be in noncompliance, including the specified provisions in question.

2. A description of the efforts made by the ~~division~~ department to resolve the matter and the reasons these efforts were unsuccessful.

3. to 5. No change.

7.7(7) Financial sanctions. If the corrective actions heretofore described fail to produce a satisfactory resolution to cases of serious nonperformance, the ~~administrator~~ director may invoke the following financial sanction procedures:

a. Send a Notice of Intention to Withhold Payment to the chairperson of the commission. This notice shall also contain notice of a reasonable time and place for a hearing, should the commission request a hearing before the ~~administrator~~ director.

b. Any request by a commission for a hearing must be made in writing, to the ~~division~~ department, within 15 days of receipt of the Notice of Intention to Withhold Payment.

c. Any hearing under the Notice of Intention to Withhold Payment shall be held before the ~~administrator~~ director. However, the ~~administrator~~ director may designate an administrative law judge to take evidence and certify to the ~~administrator~~ director the entire record, including findings and recommended actions.

d. No change.

e. If, after a hearing, the ~~administrator~~ director finds sufficient evidence that the commission has violated established rules and regulations or the terms and conditions of the cooperative agreement, the ~~administrator~~ director may withhold such contributions and payments as may be considered advisable, until the failure to expend funds in accordance with said rules, regulations, terms and conditions has been corrected or the ~~administrator~~ director is satisfied that there will no longer be any such failure.

f. If upon the expiration of the 15-day period stated for a hearing, a hearing has not been requested, the ~~administrator~~ director may issue the findings and take appropriate action as described in paragraph 7.7(7) "e."

g. If the ~~administrator~~ director finds there is serious nonperformance by the commission or its coordinator and issues an order to withhold payments to the commission as described in this rule, the commission shall not receive funds under the emergency management performance grant program for the remainder of the federal fiscal year in which the order is issued and one additional year or until such time that all issues of nonperformance have been agreeably addressed by the ~~division~~ department and the commission.

h. No change.